STATE OF MICHIGAN

COURT OF APPEALS

JANET CATHLEEN STEWART, Plaintiff-Appellant,	UNPUBLISHED January 30, 2007
v	No. 262213 Cass Circuit Court
JAMES VERL STEWART, Defendant-Appellee.	LC No. 95-000076-DM

Before: O'Connell, P.J., and White and Markey, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order modifying defendant's child support obligation without taking into account over $4 million defendant received in long-term capital gains from the one-time liquidation of his business interests. We affirm.

The couple's marital acquisitions were extensive, and the record reflects an acrimonious and exhaustive effort to divide them fairly. In June 1998, more than three years after plaintiff filed for divorce, the parties finally reached a property settlement and placed the terms of the settlement on the record. However, plaintiff repeatedly challenged the proposed judgments and changed attorneys, so the divorce judgment was not entered until August 1998. In the judgment, defendant was awarded the marital estate and his interest in two business entities, DJ&S Partnership and Best Plastics, Inc. Plaintiff was awarded nearly $200,000 in the property settlement and $176,000 in spousal support, as well as substantial retirement benefits that she later liquidated. The judgment did not include a ruling on child support, which was referred to the Cass County Friend of the Court.

In 2000, defendant liquidated his business interests. In 2003, the FOC recommended that defendant's child support obligation should increase and apply retroactively to the date of the divorce judgment, but should not account for the proceeds from the sale of defendant's business interests. Both parties objected. The case was remanded to the FOC for particular findings and then returned to the circuit court for a de novo hearing. The primary issue before the court, and the only issue on appeal, is whether the trial court must include as income defendant's extraordinary receipt in 2000 of over $4 million in long-term capital gains. We agree with the circuit court's conclusion that the one-time liquidation of the previously awarded asset was correctly excluded from the child support calculation.

Plaintiff relies almost exclusively on the general principle that the source of income is not controlling, but rather "all relevant aspects of the parent's financial status must be considered." *Good v Armstrong*, 218 Mich App 1, 6; 554 NW2d 14 (1996). Nevertheless, the Court in *Good* declined to adopt a "bright line" approach, instead recognizing that whether certain monetary accruals should be included or excluded from a child support calculation was a matter well within the trial court's discretion. *Id*. at 6-7.

The trial court did not abuse its discretion in this case, because the alleged income was actually the result of liquidating an asset awarded to defendant in the original property settlement. In its effort to calculate correctly the amount of money actually available for support, the FOC promulgated and applies the Michigan Child Support Formula (MCSF), which considers a parent's "income" the starting point for determining the parent's child support obligation. MCL 552.519(3)(a)(vi); 2003 MCSF, introduction to Section 2. Although the formula has a special section dedicated to uncovering income from business owners and self-employed parents, none of the special situations refer to an asset's liquidation as "income." 2003 MCSF 2.16. On the contrary, because liquidation usually, as here, precedes reinvestment in another income-generating asset, the formula primarily tracks the income received from the second investment and sniffs out other manipulations of the form of income received. *Id*. Here, the earnings of defendant's reinvestments were openly reported and correctly designated income, leading to a significant increase in defendant's child support obligation. The trial court properly recognized that including the unrealized gains in defendant's "income" calculation would skew the account of defendant's "available" money, threaten to deplete prematurely and imprudently the principal amount reinvested, and potentially disrupt the accrual of substantial future wealth that would inure to the child's benefit.

The trial court's approach also comports with the original judgment's award of the business interests to defendant. We note that plaintiff did not offset defendant's child support obligation by counting as income the money she had obtained from the property settlement. Although a court could conceivably impute a higher income to a parent who disposes of an asset's proceeds in bad-faith, the record in this case reflects prudent reinvestment that considerably increased defendant's calculable income. Under the circumstances, the trial court did not abuse its discretion when it disregarded the anomalous long-term capital gain in its calculation of defendant's child support obligation.

Plaintiff's classification of the liquidation as a "debt" under 2003 MCSF 2.01(B)(iii) is unavailing. It does not comport with common sense and violates the principle of *noscitur a sociis* – words listed in a group should be given related meanings. *Griffith v State Farm Mutual Automobile Ins Co*, 472 Mich 521, 533; 697 NW2d 895 (2005). In context, the "debt" language allows the FOC to consider payments that a parent would regularly receive from a debtor, even if the parent has deferred the debt's payment to evade child support obligations. The provision does not even remotely apply in this case because the business interests at issue did not result in an unpaid debt, but in actual money. The record reflects that the money was received in full and then reinvested by defendant. Unlike the situation in *Good*, *supra*, the money was not frivolously expended, but is now dedicated to other, income-generating investments. Plaintiff has never challenged the wisdom of these investments. The FOC's recommended child support payments were calculated, in part, on the returns that the reinvested capital has garnered. Therefore, plaintiff's approach would amount to a double obligation, one levied against the

corpus of defendant's investment and another on its returns. Because the gains from defendant's investment of the sale proceeds are being accounted as income, the FOC's recommendation and the trial court's order properly "estimate as accurately as possible the amount of income actually available for support of the children." 2003 MCSF 2.16(B). Rather than abusing its discretion, the trial court and the FOC commendably applied skill and diligence to this case. In the end, the court strictly adhered to the rule that child support obligations "must be fair and all relevant aspects of the parent's financial status must be considered." *Good*, *supra* at 6.

Affirmed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey